

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KAREN STEPHENS-BUTLER

VS.

**SAM'S EAST, INC. d/b/a
SAM'S CLUB #6482**

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CIVIL ACTION NO.

JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant Sam's East, Inc. d/b/a Sam's Club #6482 files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1332.

I. INTRODUCTION

1. Pursuant to 28 U.S.C. § 1441, *et seq.*, this civil action is removed from the 44th District Court of Dallas County, Texas, where this matter was pending under Cause No. DC-19-16614 in a matter styled *Karen Stephens-Butler vs. Sam's East, Inc. d/b/a Sam's Club #6482* (the "State Court Action").

II. NATURE OF THE SUIT

2. This is a premises liability lawsuit alleging claims of personal injury resulting from Defendant's actions or inactions. *Plaintiff's Original Petition pp. 2-4.*

3. Plaintiff Karen Stephens-Butler alleges that she suffered injuries when she allegedly slipped and fell in clear liquid on the floor of Defendant's premises. *Id. at p. 2.*

4. Plaintiff brought her lawsuit against Sam's in the 44th District Court of Dallas County, Texas. *See Plaintiff's Original Petition p. 1.*

III. TIMELINESS OF REMOVAL

5. Plaintiff commenced this lawsuit by filing her Original Petition on October 14, 2019. Defendant Sam's East, Inc. d/b/a Sam's Club #6482 accepted service on October 16, 2019 through its agent, CT Corporation. Thus, removal is timely.

IV. BASIS FOR REMOVAL JURISDICTION

6. Removal is proper under 28 U.S.C. §§ 1441 and 1332 because there is complete diversity of citizenship between Plaintiff and Defendant, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Plaintiff is now and was at the time of the filing of this action a legal Texas resident residing and domiciled in Mesquite, Dallas County, Texas. *Plaintiff's Original Petition p. 1*. Accordingly, for diversity purposes, Plaintiff is a citizen of Texas.

8. Plaintiff sued and served Sam's East, Inc. Defendant Sam's East Inc. is now and was at the time of the filing of this action an Arkansas corporation. Sam's West, Inc., also an Arkansas corporation, is the sole shareholder of Sam's East, Inc. The principal place of business of Sam's East, Inc. and Sam's West, Inc. is 702 SW 8th Street, Bentonville, Arkansas 72716. Accordingly, for diversity purposes, Sam's is a citizen of Arkansas.

9. There is and has been at all times relevant to this Notice of Removal, complete diversity of citizenship between Plaintiff and Defendant.

10. Upon information and belief, the amount in controversy exceeds the jurisdictional requirement of \$75,000, exclusive of interest and costs. Plaintiff alleges she suffered severe bodily injuries. *See Plaintiff's Original Petition p. 5*. Plaintiff seeks damages for medical care and expenses past and future, physical pain and mental anguish past and future, physical impairment past and future, disfigurement past and future, loss of earnings past and future, and loss of earning capacity past and future. *Id. at pp. 5-6*. Plaintiff's Original Petition alleges damages are in excess

of \$1,000,000. *Id. at p. 1*. The sum claimed by Plaintiff should control the evaluation of amount in controversy.

11. In an effort to confirm the amount in controversy, Wal-Mart sent correspondence to Plaintiff's counsel on November 5, 2019 requesting Plaintiff stipulate she is seeking damages less than \$75,000 in damages, exclusive of interest and costs. Plaintiff's counsel has not responded; thus, there is a presumption that the amount in controversy in this case exceeds \$75,000 exclusive of interest and costs. *Heitman v. State Farm Mut. Auto. Ins. Co.*, No. 5:02-CV-0433-D, 2002 U.S. Dist. LEXIS 6192 (N.D. Tex. April. 9, 2002).

V. THIS NOTICE IS PROCEDURALLY CORRECT

12. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b), because Defendant is not a citizen of Texas, the state in which the action was brought. This action is removable to this Court and venue is proper because this United States District Court and Division embraces the place where the State Court Action was pending. 28 U.S.C. §§ 124(a)(1), 1441(a).

13. Sam's has attached to this Notice of Removal the documents required by 28 U.S.C. § 1446(a) and Local Rule 81.1 as follows:

- A: Index of all documents filed in the State Court Action.
- B: Docket Sheet in the State Court Action.
- C: Copies of all process, pleadings and orders filed in State Court.
- D: Signed Certificate of Interested Persons.

14. Sam's is filing with the Notice of Removal a completed Civil Cover Sheet, a Supplemental Civil Cover Sheet, and separate Certificate of Interested Persons.

15. Sam's retains the right to supplement the jurisdictional allegations by affidavit, declaration, or otherwise should Plaintiff challenge the allegations in a motion to remand or other filing.

16. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to all parties and to the Clerk of the 44th District Court of Dallas County, Texas.

17. Plaintiff has demanded a jury trial in the State Court Action. Defendant has demanded a jury trial in the State Action.

18. Trial has not commenced in the 44th District Court.

V. CONCLUSION

19. Since diversity jurisdiction exists over Plaintiff's claim as set forth in Plaintiff's Original Petition, Defendant desires and is entitled to remove the lawsuit filed in the 44th District Court of Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division.

WHEREFORE, PREMISES CONSIDERED, Defendant Sam's East, Inc. d/b/a Sam's Club #6482, pursuant to and in conformance with the statutory requirements, removes this action from the 44th District Court of Dallas County, Texas, to this Court.

Respectfully submitted,

By: /s/ Ramona Martinez

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify a true and correct copy of this document has been forwarded to counsel for Plaintiff either by e-service, telefax, electronic mail, and/or regular U.S. mail on this 15th day of November, 2019:

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